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The Commonwealth of Massachusetts
Executive Office of Public Safety
Fire Safety Commission

Automatic Sprinkler Appeals Board

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CHAIRMAN

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VICE CHAIR

Docket # 2005-18
63 Webster Street
Fall River, MA.

AUTOMATIC SPRINKLER APPEALS BOARD
DECISION AND ORDER

A) Statutory and Regulatory Framework

This is an administrative appeal held in accordance with Massachusetts General Laws Chapter 30A; Chapter 148, section 26G1/2 and Chapter 6, section 201, relative to a determination of the Fall River Fire Department, requiring the installation of an adequate system of automatic sprinklers in a building operated by St. Michael's Club, Inc. and owned by Rita L. Cabral (hereinafter referred to as the Appellants). The building, which is the subject of the order, is located at 63 Webster Street, Fall River, MA.

B) Procedural History

By written notice dated 3-15-05, the Fall River Fire Department issued an Order of Notice to the Appellants informing them about the provisions of a new law, M.G.L c. 148, s.26G1/2, which requires the installation of an adequate system of automatic sprinklers in certain buildings or structures. The building subject to the order is located at 63 Webster Street, Fall River, MA. The appellants filed an appeal of said order on 4-27-05. The Board held a hearing relative to this appeal on 8-4-05, at the Department of Fire Services, Stow, Massachusetts.

The Appellants were represented by Attorney Clement Brown and Jordan L. Cabral, President of St. Michael's Club Inc. William Silvia Deputy Fire Chief, appeared on behalf of the Fall River Fire Department.

Present for the Board were: Maurice M. Pilette, Chairperson, Edward G. McCann, Brian Gore, Chief Thomas Coulombe, Paul Donga and Stephen D. Coan. Peter A. Senopoulos, Esquire, was the Attorney for the Board.

C) Issue(s) to be Decided

Whether the Board should affirm, reverse or modify the enforcement action of the Fall River Fire Department relative to the subject building in accordance with the provisions of M.G.L. c.148, s. 26G1/2?

D) Evidence Received

1. Application for Appeal
2. Order of Notice
3. Supplemental statement of reasons for the appeal
4. 1st Notice of hearing to Appellant
5. 1st Notice of hearing to Fire Department
6. Request for a Continuance
7. 2d Notice of hearing to Appellant
8. 2d Notice of hearing to Fire Department
9. Certificate of Inspection issued on 12-31-04
10. Briefing book submitted by the Appellant containing items marked as Tabs A through I

E) Subsidiary Findings of Fact

- 1) By Notice dated 3-15-05 the Fall River Fire Department issued an Order to the Appellant requiring the installation of an adequate system of automatic sprinklers in a building located at 63 Webster Street, Fall River, in accordance with the provisions of M.G.L. c. 148, s.26G. This building is used by the St. Michaels' Club, Inc., a private, for profit establishment.
- 2) According to the building's Certificate of Inspection, dated 12-31-04, the establishment has a capacity of 60 persons in the first floor bar area which measures approximately 33' x 40', 70 persons in the first floor dining area which measures

approximately 40' x 24' and 80 persons in the second floor function hall area which measures approximately 32' x 40'. Said certificate of inspection does not indicate the use group of this particular building.

- 3) The Appellant contends that the establishment is principally used, advertised and held out as a restaurant and is therefore exempt from the sprinkler provisions of M.G.L. c.148, s.26G1/2. The establishment serves meals on a daily basis. The "bar area" is also used for restaurant seating. However, a customer can patronize this area for the purchase of liquor only. The bar area does not expand into the dining area since the two rooms are entirely separate rooms with only one door between them. The upstairs function hall area is used solely for the purpose of private function rental. There are about one dozen "private functions" such as showers, christenings and weddings held on an annual basis. On most occasions the function hall features a service bar when alcoholic beverages are provided in addition to food. There was testimony indicating that on limited occasions persons are allowed to purchase alcoholic beverages in the first floor bar area. Functions are not held beyond midnight and there is language in a standard written rental agreement relative to the limits of operation and building capacity. During these functions a function manager is always present.
- 4) The club does not provide live or recorded music in the first floor areas for dancing purposes or for a viewing audience and has never provided any other musical, theatrical, or comedy presentations. The club does hold an entertainment license, but rarely features any live entertainment, except on rare occasions in the second floor function area in the form of a disc jockey. The club has not recently allowed such entertainment and is willing to surrender its entertainment license.
- 5) Full meals are routinely served in the first floor "bar" area at the same time meals are served in the dining area. The restaurant portion is open daily from 8:00 am until 9:00pm and until approximately 10:00 pm Thursday through Saturdays. The bar area is open daily from approximately 10:00 am until 1:00. It closes about one hour earlier on Mondays and Tuesdays.
- 6) The fire department issued the Order to install sprinklers based upon the overall building capacity and the existence of liquor, dance and entertainment licenses. Additionally, the department was aware that entertainment was provided in the past in the second floor function area.
- 7) The representative of the fire department did not contest the factual characteristics of the building, including its use and description. Said representative indicated that this establishment has not had a history of incidents involving overcrowding.

F) Ultimate Findings of Fact and Conclusions of Law

- 1) The provisions of the 2d paragraph of M.G.L. c. 148, s. 26G1/2, in pertinent part, states: “every building or structure, or portions thereof, of public assembly with a capacity of 100 persons or more, that is designed or used for occupancy as a night club, dance hall, discotheque, bar, or similar entertainment purposes...(a) which is existing or (b) for which an approved building permit was issued before December 1, 2004, shall be protected throughout with an adequate system of automatic sprinklers in accordance with the state building code”. The law was effective as of November 15, 2004. Under the provisions of the new law (St.2004, ch.304, c.11) an owner is required to submit plans and specifications for the installation of such sprinklers within 18 months of the effective date of the act (May 15, 2006) and is required to complete the mandated sprinkler installation by November 15, 2007.
- 2) This establishment has many characteristics that are typical of a restaurant. It appears that the service of food is the primary customer attraction, particularly in that portion of the building considered the dining area. The mandatory sprinkler requirements do not apply to a place of assembly within a building or structure or portions thereof used “principally as a restaurant”. Such restaurant establishments feature meals as the main or principal customer attraction. However, it appears that this particular establishment features a portion of the building that could also be considered a “bar” or lounge area where meals are served, but is also designed or used to serve alcoholic beverages to customers well beyond the hours of restaurant operation (3 hours). It also has a 2nd floor function room that has been used for a variety of purposes. This establishment, that features combined characteristics of a restaurant, bar and function room are fairly common throughout the Commonwealth, yet present unique challenges in implementing the provisions of section 2G1/2.

In an attempt to interpret the legislative intent of this law as applied to such establishments, the board will look to the plain language of the statute in rendering a determination. The Board notes that section 26G1/2, in pertinent part, requires the installation of an adequate system of automatic sprinklers in: “Every ... building or structure ...or **portions thereof**, of public assembly **with a capacity of 100 persons or more** that is designed or used for occupancy as a ...nightclub, dancehall discotheque, bar or similar entertainment purposes...”. In determining whether the sprinkler requirement will apply in this case and other similar cases that involve a building which features a combination of characteristics, the legislatures use of the words “portions thereof” in describing the areas of the building subject to the sprinkler installation is significant. This language clearly requires an analysis of the buildings characteristics and floor plan to determine if a reasonable separation exists between that portion of the building used or designed for bar or entertainment purposes and the other portion of the building not subject to the law. In determining if a sprinkler system is required in such “combination” establishments the Board will conduct the following two-part analysis:

1. Is that portion of the building used or designed for bar or entertainment purpose reasonably apportioned and separate from the other areas of the building? In determining this question there must be a sufficient physical separation that exists between the entertainment or bar portion from the rest of the building which prevents the occupants or activities of the bar to expand into the dining area. Such separation can include a permanent wall or closed door. Additionally, there must be a separation in an operational or business context that exists which assures that the activities that occur in the bar or entertainment area do not overflow or expand into the restaurant or other areas when such areas are no longer in operation.
 2. If the separation exists, as described in question #1, does that portion used or designed for bar or entertainment purposes legally exceed a capacity of 100 persons or more?
- 3) The above analysis, applied to this particular establishment indicates the existence a physical separation between the bar area and the rest of the building which prevents the bar activities to expand into the dining area. This separation includes a permanent wall with a door that is capable of closing. The bar area also has a separate and independent means of egress. Additionally, there was testimony that a separation in an operational and business context exists which assures that the activities that occur in the bar area do not overflow or expand into the restaurant or other areas when they are shut down. The portion of the building used as a bar has capacity of 60 persons as indicated in the current certificate of inspection. This amount is less than the statutory capacity of 100 persons or more which would require the installation of sprinklers in this bar area.
- 4) With respect to the function room on the second floor, it appears that this function room is rented out approximately 12 times per year for privately organized small wedding and baby shower type functions. The described uses and activities that currently occur in that room are not consistent with the characteristics of an "A-2 like" use group that this board has previously determined to be typical of a nightclub, dance hall, discotheque or similar entertainment purpose. Those characteristics are as follows:
- a) No theatrical stage accessories other than raised platform;
 - b) Low lighting levels;
 - c) Entertainment by a live band or recorded music generating above-normal sound levels;
 - d) Later-than-average operating hours;
 - e) Tables and seating arranged or positioned so as to create ill defined

- aisles;
- f) A specific area designated for dancing;
- g) Service facilities primarily for alcoholic beverages with limited food service; and
- h) High occupant load density.

Additionally, this function room is on a separate floor from the bar and restaurant area and, like the bar area, is separate and apportioned, both physically and operationally, from the activities on the first floor. The capacity of this function hall portion of the establishment is 80. This amount is less than the s. 26G1/2 capacity number (100 persons or more) which triggers the sprinkler installation in those portions of a building that are used or designed as a nightclub, dance hall, discotheque, bar or similar entertainment purpose. Additionally, based upon the dimensions of this function room and its legal capacity, a high occupant load density does not exist.

G. Decision and Order

The dining portion of this establishment clearly has the characteristics of a restaurant. The sprinkler requirements of M.G.L. c.148, s.26G1/2 do not apply to Restaurants. Although a bar exists in the first floor portion of this building, it is sufficiently apportioned and separated, both physically and operationally from the restaurant and other areas of this building. This portion of the building, used or designed as a bar, does not have a legal capacity of 100 persons or more as required by s. 26G1/2 sprinkler mandate. The second floor function hall, as currently used is not considered a nightclub, dancehall, discotheque, bar or similar entertainment purpose since it does not present the characteristics typical of an "A-2 like" assembly use group. Additionally, this 2nd floor function hall area is sufficiently apportioned and separate from the remaining areas of the building. Except for occasionally allowing patrons of the function room to purchase liquor at the first floor bar, this function hall is also operationally separate from the remaining portions of the building. This portion of the building, even if it was used for such entertainment purposes does not have a legal capacity of 100 persons or more as required by the s. 26G1/2 sprinkler mandate.

For the foregoing reasons, this Board reverses the Order of the Fall River Fire Department to install sprinkler protection in the subject building in accordance with the provisions of M.G.L. c.148, s.26G1/2. This determination is contingent upon:

1. The continued use and operation of the establishment in a manner consistent with the findings herein; and
2. The establishment prevents customers who use the 2nd floor function hall from purchasing beverages in the first floor bar portion. This can be accomplished by routinely providing an independent source of beverages (such as a service bar) within the function hall portion. This condition assures that an operational separation exists

between these portions of the establishment and will prevent the potential for an overcrowding situation in the first floor bar area.

H) Vote of the Board

Maurice Pilette, (Chairperson)	In Favor
Paul Donga	In Favor
Edward G. McCann	In Favor
Thomas Coulombe	In Favor
Stephen D. Coan	In Favor
Brian Gore	In Favor

I) Right of Appeal

You are hereby advised that you have the right, pursuant to section 14 of chapter 30A of the General Laws, to appeal this decision, in whole or in part, within thirty (30) days from the date of receipt of this order.

SO ORDERED,



Maurice Pilette, P.E.. Chairman
Chairperson

Dated: September 9, 2005

A COPY OF THIS DECISION AND ORDER WAS FORWARDED BY 1st CLASS MAIL, POSTAGE PRE-PAID, TO: Clement Brown, Horvitz & Brilhante, LLP, 321 North Main Street, Fall River, MA. **and** Deputy Chief William Silvia, Fall River Fire Department, 140 Commerce Drive, P.O. Box 749, Fall River, MA. 02720-0749